IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7834 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TARUNKUMAR KESHAVLAL PARMAR

Versus

COMMISSIONER OF SALES TAX

Appearance:

MR PR NANAVATI for the Petitioner.

Ms.Harsha Devani, Assistant GOVERNMENT PLEADER, for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/02/2002

ORAL JUDGEMENT

Rule. Ms.Harsha Devani, learned AGP, waives service of rule on behalf of the respondents.

With the consent of the parties, the matter is taken up for final hearing.

The father of the petitioner was serving in the Sales Tax Department as Sales Tax Inspector. While in service, he died on 19.3.1998. After his death, the petitioner, who is his son, applied for compassionate appointment, in April, 1998. The said prayer was rejected by the Department on 30th June, 1999 on the ground that the income of the family of the deceased is more than the prescribed limit. The said decision is annexed as Annexure `A', page 14. The aforesaid action is challenged by way of filing this petition.

At the time of hearing of this petition, it was argued by Mr.Nanavaty, learned Advocate for the petitioner, that while considering the income criterion, the Department has considered income towards family pension, which the family of the deceased is receiving. According to him, in view of the various judgments of this Court, pension income is not required to be considered while arriving at the quantum of income of the family of the deceased. Ms.Devani, learned AGP, has also fairly conceded that while deciding the quantum of income, pension income is taken into account and if that amount is excluded, then the family is not having any other income. In that view of the position and in view of the decision of this Court in Special Civil Application No.11020 of 1993, it is clear that while arriving at the figure of the income, the pensionary benefits are not required to be considered. In that view of the matter, the impugned decision at Annexure `A' is quashed and set aside. The matter is remanded to the Competent Authority for taking fresh decision in accordance with law. The matter is accordingly remanded to the respondent No.2. It is directed that fresh decision may be taken in this behalf. At the time of taking decision, the pension income of the family may not be taken into consideration. The Department may accordingly take fresh decision in accordance with law. Such decision may be taken within a period of three months from the date of receipt of the writ of this Court.

Petition is accordingly allowed. Rule is made absolute accordingly with no order as to costs.

4th February, 2002 (P.B. Majmudar, J.)

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(apj)